

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**DANIEL BRYAN KELLY,**

**Plaintiff,**

**V.**

**RICKY OWENS, et. al.,**

## Defendants.

**CIVIL ACTION NO. 2:05-cv-1150-T**

**COOSA COUNTY SHERIFF RICKY OWENS'S MOTION TO DISMISS**

COMES NOW Coosa County Sheriff Ricky Owens, a Defendant in the above-entitled action, and moves this Court to dismiss all of the Plaintiff's claims against him, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. As grounds therefor, Defendant states as follow:

1. The Plaintiff brings this 42 U.S.C. § 1983 lawsuit alleging violations of his Eighth and Fourteenth Amendment rights against Sheriff Owens in his official and individual capacities.
2. As understood by Sheriff Owens, the Plaintiff's claims against him include:
  - a. An Eighth Amendment claim alleging deliberate indifference to a serious medical condition by failing to provide medical care (Count I);
  - b. An Eighth/Fourteenth Amendment claim alleging deliberate indifference to a serious medical condition by delaying medical care (Count II);
  - c. An Eighth/Fourteenth Amendment claim for failure to train the Coosa County Jail staff to dispense medication (Count II);
  - d. An Eighth/Fourteenth Amendment claim for failure to train the Coosa County Jail staff to recognize serious medical conditions (Count II);

e. An Eighth/Fourteenth Amendment claim alleging unconstitutional jail conditions (Count III);

f. An Eighth/Fourteenth Amendment claim for failure to train the Coosa County Jail staff to not mistreat prisoners (Count IV); and

g. An Eighth/Fourteenth Amendment claim for deliberate indifference to a serious risk of harm in failing to stop the Plaintiff from being abused (Count V).

3. The Plaintiff's individual capacity claims are due to be dismissed for lack of subject matter jurisdiction and because Sheriff Owens is entitled to qualified immunity.

4. The Plaintiff's official capacity claims are due to be dismissed for lack of subject matter jurisdiction.

5. Sheriff Owens requests the opportunity to be heard orally on this Motion.

**WHEREFORE, THE ABOVE PREMISES CONSIDERED**, Coosa County Sheriff Ricky Owens moves this Court to dismiss all claims made against him and award him costs and attorney's fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted this 13th day of January, 2006.

**s/Gary L. Willford, Jr.**  
KENDRICK E. WEBB – Bar No. WEB022  
GARY L. WILLFORD, JR. – Bar No. WIL198  
Attorneys for Defendant Ricky Owens  
WEBB & ELEY, P.C.  
7474 Halcyon Pointe Road (36117)  
Post Office Box 240909  
Montgomery, Alabama 36124  
Telephone: (334) 262-1850  
Fax: (334) 262-1889  
E-mail: gwillford@webbeley.com

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 13th day of January, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Richard J. Stockham, III, Esquire  
Stockham, Carroll & Smith, P.C.  
2204 Lakeshore Drive, Suite 114  
Birmingham, AL 35209

Kristi Allen Dowdy, Esquire  
McDonald & Dowdy  
1005 Montgomery Highway  
Birmingham, AL 35216

Alex L. Holtsford, Jr., Esquire  
Rick A. Howard, Esquire  
Nix, Holtsford, Gilliland, Higgins & Hitson, PC  
P. O. Box 4128  
Montgomery, AL 36103-4128

**s/Gary L. Willford, Jr.**  
OF COUNSEL